



Draft Implementation Agreement

PUBLIC REVIEW DRAFT

IMPLEMENTATION AGREEMENT

WITH REGARD TO

THE PACIFIC LUMBER COMPANY HABITAT CONSERVATION PLAN

By And Among

THE UNITED STATES FISH AND WILDLIFE SERVICE

THE NATIONAL MARINE FISHERIES SERVICE

THE CALIFORNIA DEPARTMENT OF FISH AND GAME

THE CALIFORNIA DEPARTMENT OF FORESTRY

and

**THE PACIFIC LUMBER COMPANY, SCOTIA PACIFIC HOLDING COMPANY, AND
SALMON CREEK CORPORATION**

_____, 1999

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LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Map of Plan Area
B	List of Covered Species
C	Map of MMCAs
D	Form of Covenants, Conditions and Restrictions for Sale of a MMCA
E	Form of Covenants, Conditions and Restrictions for Full Mitigation Obligation
F	Form of Streambed Alteration Agreement
G	50 Code of Federal Regulations section 13.28(a) (1999)
H	15 Code of Federal Regulations Part 904 (1999)
I	Unforeseen Circumstances regulations: 50 C.F.R. section 17.3, 50 C.F.R. section 17.22(b)(5)(iii)(B), 50 C.F.R. section 17.32(b)(5)(iii)(B), and 50 C.F.R. section 222(g)(3)(1999)
J	Form of Release of Covenant

PALCO HABITAT CONSERVATION PLAN

IMPLEMENTATION AGREEMENT

This AGREEMENT REGARDING THE IMPLEMENTATION OF THE PALCO HABITAT CONSERVATION PLAN ("Agreement") is entered into as of the Effective Date by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an agency of the United States Department of the Interior, the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), an agency of the United States Department of Commerce, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), an agency of the State of California, the CALIFORNIA DEPARTMENT OF FORESTRY ("CDF"), an agency of the State of California, and THE PACIFIC LUMBER COMPANY, SCOTIA PACIFIC HOLDING COMPANY and SALMON CREEK CORPORATION (collectively, "PALCO").

These entities may be referred to collectively as "Parties" and each individually as a "Party." USFWS and NMFS may be referred to collectively as the "Services," and each individually as a "Service." USFWS, NMFS and CDFG may be referred to collectively as the "Wildlife Agencies," and each as a "Wildlife Agency." The Wildlife Agencies and CDF are referred to collectively as the "Agencies." (Additional defined terms are set forth in the "Recitals and Purposes" portion of this Agreement and in Section 1 of this Agreement.)

Recitals and Purposes

- A. PALCO owns approximately 211,000 acres within Humboldt County, California (the "PALCO Lands"). PALCO is in the process of acquiring and is planning to acquire certain additional lands near or adjacent to the PALCO Lands (the "Additional Lands"; the PALCO Lands and Additional Lands are referred to collectively herein as the "Covered Lands"). The Covered Lands fall within several major watersheds in Humboldt County, California. Certain portions of these watersheds form the Plan Area for this Agreement (the "Plan Area"). A map of the Plan Area, showing all the Covered Lands, is attached as Exhibit "A".
- B. In September 1996, the United States and the State of California, acting through

its Secretary of Resources, entered into an agreement providing for the sale of the Headwaters Reserve to the United States and State of California and establishing certain conditions on such sale including, but not limited to, the approval of a habitat conservation plan (HCP) and issuance of associated incidental take permits by USFWS and NMFS, and the approval of a sustained yield plan by the CDF, all with regard to timber harvesting and related activities on the Covered Lands.

- C. The Covered Lands have been determined to possess habitat values which are important to the conservation and recovery of certain threatened, endangered, and other species of concern.
- D. USFWS and NMFS have jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants and their habitats under various federal laws, including the federal Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (“FESA”), the Fish and Wildlife Coordination Act, 16 U.S.C. § 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. § 742a *et seq.*
- E. CDF has jurisdiction over the timberlands of the State of California as set forth in the Forest Practice Act, the California Timberland Productivity Act of 1982, and the implementing regulations for those statutes.
- F. CDFG has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species under the California Endangered Species Act (California Fish and Game Code 4 2050 *et seq.*, “CESA”), and other State law including but not limited to the Native Plant Protection Act (California Fish and Game Code § 1900 *et seq.*) and California Fish and Game Code sections 1600 *et seq.*, 3503.5 and 3511. In addition, pursuant to Section 1802 of the California Fish and Game Code, CDFG is trustee for fish and wildlife resources.
- G. PALCO desires to use the Covered Lands, including, upon their acquisition by

PALCO, the Additional Lands, for the Covered Activities, including all activities relating to timber production and harvesting, gravel mining, road construction and maintenance, grazing, stream enhancement projects, fish rearing operations, and the Operating Conservation Program activities, as particularly described at Volume I, Part A, of the Habitat Conservation Plan (the “Covered Activities”).

- H. FESA prohibits the “Take” of species listed as endangered or threatened under FESA. Under Section 10(a) of FESA (16 U.S.C. section 1539(a)), the Services may issue an incidental take permit authorizing the Take of endangered or threatened species incidental to the carrying out of otherwise lawful activities if certain statutory requirements are met by the applicant and such Take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain an incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such taking.
- I. CESA prohibits the “Take” of species listed as endangered, threatened or candidate species under CESA. CESA authorizes the take of listed species incidental to otherwise lawful activities if the impacts of the Take are minimized and fully mitigated, if issuance of the permit would not jeopardize the continued existence of the species, and the permit applicant has ensured adequate funding to implement the measures required to ensure the impacts of the authorized take are minimized and fully mitigated and for monitoring compliance with and the effectiveness of those measures. The measures required to minimize and fully mitigate the impacts of the Take are required to be “roughly proportional in extent to the impact of the authorized take.” Where various measures are available to meet this obligation, the measures required shall maintain the applicant’s objectives “to the greatest extent possible.”
- J. The Covered Activities may result in the Take of species listed as threatened or

endangered under FESA and threatened or endangered, or a candidate for such status, under CESA. In order to obtain permits to allow the Incidental Take of these species under section 10(a)(1)(B) of FESA, PALCO has developed and set forth in the HCP a series of measures to minimize and mitigate to the maximum extent practicable the effects of Take incidental to PALCO's Covered Activities. In order to obtain a permit under Section 2081(b) of the California Fish and Game Code and authorization under Section 2090 of the California Fish and Game Code for Incidental Take of these species under CESA, PALCO has developed and set forth in the HCP a series of measures to minimize and fully mitigate the effects of Take incidental to PALCO's Covered Activities.

- K. The purposes of this Agreement are (1) to ensure implementation of each of the terms of the HCP; (2) to describe remedies and recourse should any party fail to perform its obligations as set forth in the HCP and this Agreement; and (3) to provide long term assurances to PALCO that as long as the terms of the HCP, the Federal Permit, the State Permit and this Agreement are fully performed, no additional conservation or mitigation will be required of PALCO to minimize and mitigate the impacts of Take of the Covered Species on the Covered Lands except as provided in the HCP and this Agreement or required by law.
- L. PALCO is agreeing to substantial commitments of land, natural resources, money and other property for the conservation of the Covered Species and their habitats, and is agreeing to other substantial restrictions on the use of the Covered Lands based on the assurances provided by the Agencies in this Agreement. These commitments would not have been made by PALCO but for the assurances of the Agencies provided in the HCP and this Agreement.

Agreement

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. DEFINITIONS

“Adaptive Management” means a flexible, iterative approach to long-term management of biotic resources and achievement of the HCP’s biological objectives that is directed over time by the results of on-going monitoring activities, changed conditions and new information. Biological management techniques and specific objectives are regularly evaluated in light of monitoring results and other new information. These evaluations are used over time to adapt both the management directives and techniques to better achieve the HCP’s overall biological objectives.

“Additional Lands” means those areas within the Plan Area which are not owned by PALCO as of the Effective Date but which will become Covered Lands to which the Wildlife Agencies will apply the Take authority granted by the Wildlife Agencies to PALCO pursuant to the HCP and this Agreement once PALCO acquires such lands, or the right to use such lands for Covered Activities, in accordance with Sections 5.1 and 5.2 of this Agreement. The Additional Lands are identified on Exhibit “A” hereto.

“Agreement” means this Agreement Regarding the Implementation of the PALCO Habitat Conservation Plan by and among USFWS, NMFS, CDFG, CDF and PALCO.

“Annual Report” shall have the meaning set forth in section 3.4.2 of this Agreement.

“Aquatics Conservation Plan” means that segment of the HCP entitled “Aquatic Species Conservation Plan.”

“Assurances Rule” means the regulations promulgated jointly by the USFWS and NMFS at 50 C.F.R. section 17.22(b)(5)(iii)(B), 50 C.F.R. section 17.32(b)(5)(iii)(B), and 50 C.F.R. section 222(g)(3) as of the Effective Date, and attached as Exhibit “I” hereto.

“Birds of Prey” means any birds in the orders *Falconiformes* or *Strigiformes*.

“BGEPA” means the Bald and Golden Eagle Protection Act (16 U.S.C. § 668-668d).

“CDF” means the California Department of Forestry, or any successor agency thereof.

“CDFG” means the California Department of Fish and Game, or any successor agency thereof.

“CEQA” means the California Environmental Quality Act (Cal. Pub. Resources Code section 21000 *et seq.*).

“CESA” means the California Endangered Species Act (Cal. Fish & Game Code section 2050 *et seq.*).

“Changed Circumstance Notice” means the notice concerning the conservation and mitigation measures or other planned response to a Changed Circumstance to be provided by USFWS, NMFS, and/or CDFG, as applicable, pursuant to section 6.1.6.4.2 and 6.2.3.2 of this Agreement.

“Changed Circumstances” means those changes in circumstances affecting a Covered Species or the Plan Area as specifically provided for pursuant to Volume IV, Part H of the HCP.

“Conservation and mitigation” and “conservation or mitigation” means the commitment of land, water, and financial compensation, and restrictions on the use of land, water or other natural resources.

“Conserved Habitat Areas” means the MMCAs.

“Covered Activities” means the following activities: (a) all activities relating to timber management, including timber harvest, site preparation, tree planting, vegetation management, thinning, fertilization and fire suppression; (b) gravel and rock extraction; (c) road construction, improvement, maintenance and use; (d) grazing; (e) stream enhancement projects; (f) operation of fish rearing facilities; (g) scientific surveys and studies; (h) limited types of recreation; (i) all activities included within the Operating Conservation Program; and (j) all activities necessarily incident to such activities. These activities are further described in Volume I, Part A of the HCP.

“Covered Habitat” means the coastal redwood forest community.

“Covered Lands” means the lands upon which the Federal Permit and State Permit authorize Incidental Take of Covered Species and the lands to which the Operating Conservation Program applies, including, upon their acquisition, the Additional Lands. These lands are

depicted on Exhibit “A”. Incidental Take authorization for Additional Lands will become effective only in accordance with Section 5.2 of this Agreement.

“Covered Species” means the Species for which Incidental Take authority for Covered Activities is being granted by the Wildlife Agencies to PALCO pursuant to the Federal Permit and the State Permit. Covered Species include the Federal Listed Species, the State Listed Species, and the Other Species of Concern. The list of Covered Species is attached as Exhibit “B”.

“Effective Date” means the date following execution of this Agreement by all Parties on which the Federal Permit and the State Permit take effect as to authorize the Incidental Take of Covered Species by PALCO pursuant to the Covered Activities.

“Federal Listed Species” means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP, as of the date of such listing.

“Federal Permit” means, collectively, the permit issued by USFWS and the permit issued by NMFS pursuant to section 10(a) of FESA to permit Incidental Take of Covered Species which may occur as a result of Covered Activities by PALCO on the Covered Lands.

“FESA” means the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*).

“Forest Practice Act” means the Z’berg-Nejedly Forest Practice Act of 1973 (Cal. Pub. Resources Code, §45 11 *et seq.*).

“Fully Protected Species” means any Covered Species found at California Fish and Game Code sections 3511, 4700, 5050 and 5515, or any successor statutes.

“Habitat Coverage Species” is any Species for which Take is authorized by CDFG pursuant to Section 2835 of the Fish and Game Code, and which is dependent upon or associated with the Covered Habitat.

“HCP” means the PALCO Habitat Conservation Plan.

“Incidental Take” means the Take of a Species which is incidental to an otherwise lawful activity.

“MBTA” means the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703-712).

“MMCA” means the Marbled Murrelet Conservation Areas. The MMCA are those areas listed on Exhibit “C” hereto and depicted on Volume V, Map 25 of the HCP in which the Covered Activities are restricted, pursuant to section 3.1.1. of this Agreement, to MMCA Conservation Activities.

“MMCA Conservation Activities” means those activities, specifically listed at section 3.1.1. of this Agreement and Volume I, Part A of the HCP, which PALCO may conduct in the MMCA.

“Murrelet Recovery Plan” means the most recent recovery plan in existence for the marbled murrelet (*Brachyramphus marmoratus*), and approved by USFWS in accordance with FESA.

“NCCP Act” means the Natural Community Conservation Planning Act, California Fish and Game Code section 2800 *et seq.*

“NCCP Plan” means a plan for the conservation and management of species approved by CDFG pursuant to the NCCP Act.

“NEPA” means the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).

“NMFS” means the National Marine Fisheries Service, or any successor agency thereto.

“Operating Conservation Program” means the conservation and management measures provided under the HCP to minimize and mitigate the impacts of Take of the Covered Species, as described at Volume IV, Parts A, B, C, D and E of the HCP. The Operating Conservation Program includes those measures described at Volume IV, Part H of the HCP to respond to Changed Circumstances.

“Other Species of Concern” means those Covered Species which are not Federal Listed Species and are not State Listed Species.

“PALCO” means, collectively, The Pacific Lumber Company, Scotia Pacific Holding

Company and Salmon Creek Corporation (or the specifically-identified subsidiaries of The Pacific Lumber Company existing on the Effective Date owning Covered Land and/or engaging in Covered Activities on the Covered Land, and signatory to the Agreement), their officers, directors, employees, and agents.

“PALCO Lands” means those lands owned by PALCO as of the Effective Date within the Plan Area.

“Party” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Plan Area” means the area depicted on the map attached as Exhibit “A”.

“Species” shall have the meaning ascribed to such term in FESA and its implementing regulations.

“State Listed Species” means the Covered Species which are listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, and the Covered Species which are listed as threatened or endangered, or a candidate for such status pursuant to CESA during the term of the HCP, as of the date of such listing.

“State Permit” means the permit issued by CDFG pursuant to section 2081 of the California Fish and Game Code. For purposes of this Agreement, “State Permit” also includes any authorization for Incidental Take of Covered Species by Covered Activities on the Covered Lands pursuant to sections 2835 and 2090 *et seq.* of the California Fish and Game Code.

“Streambed Alteration Agreement” means that certain Streambed Alteration Agreement, dated the Effective Date, by and between CDFG and PALCO, a form of which is attached as Exhibit “F” and incorporated into the HCP.

“SYP” means the Sustained Yield Plan submitted by PALCO to CDF in accordance with the Forest Practice Act and the implementing regulations thereof.

“Take” and “Taking” have the same meaning as provided in FESA and its implementing regulations with regard to activities subject to FESA, and have the same meaning as provided in California state law with regard to activities subject to CESA and other applicable provisions of the California Fish and Game Code.

“Unforeseen Circumstances” means changes in circumstances affecting a Covered

Species or the Plan Area that could not reasonably have been anticipated by PALCO, NMFS, USFWS and CDFG at the time of the HCP's negotiation and development and that result in a substantial and adverse change in the status of one or more of the Covered Species.

"USFWS" means the United States Fish and Wildlife Service, or any successor agency thereto.

"Wildlife Agency" shall have the meaning set forth in the Introductory Paragraph of this Agreement.

2. FINDINGS AND OBLIGATIONS OF THE AGENCIES

2.1 USFWS

2.1.1 USFWS Findings

For each Covered Species which is a Federal Listed Species within the jurisdiction of the USFWS, USFWS finds that the HCP has satisfied the permit issuance criteria under section 1 O(a)(2)(B) of FESA in that:

- (i) the Taking of the Covered Species will be incidental;
- (ii) PALCO will, to the maximum extent practicable, minimize and mitigate the impacts of the Taking;
- (iii) PALCO has ensured that adequate funding for the HCP will be provided;
- (iv) the Taking of the Covered Species will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild;
- (v) the other measures required by USFWS as being necessary or appropriate for purposes of the HCP will be met; and
- (vi) USFWS has received such other assurances as USFWS required that the HCP will be implemented.

For each Covered Species which is not a Federal Listed Species, USFWS finds that the HCP has satisfied the permit issuance criteria under section 1 O(a)(2)(B) of the FESA that would otherwise apply if such Covered Species were a Federal Listed Species.

2.1.2 USFWS Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other applicable legal requirements, USFWS will issue to PALCO the Federal Permit under Section 10(a)(1)(B) of the FESA, authorizing the Incidental Take by PALCO of each Covered Species within the jurisdiction of USFWS resulting from Covered Activities on the Covered Lands. The Federal Permit will be conditioned on compliance with the terms and conditions of the Federal Permit, the HCP, and this Agreement.

USFWS shall monitor PALCO's implementation of the HCP and compliance with the Federal Permit, and shall provide technical assistance to PALCO regarding implementation of the HCP throughout the duration of the Federal Permit.

2.2 NMFS

2.2.1 NMFS Findings

For each Covered Species within the jurisdiction of NMFS which is a Federal Listed Species, NMFS finds that the HCP has satisfied the permit issuance criteria under section 10(a)(2)(B) of FESA in that:

- (i) the Taking of the Covered Species will be incidental;
- (ii) PALCO will, to the maximum extent practicable, minimize and mitigate the impacts of the Taking;
- (iii) PALCO has ensured that adequate funding for the HCP will be provided;
- (iv) the Taking of the Covered Species will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild;
- (v) the other measures required by NMFS as being necessary or appropriate for purposes of the HCP will be met; and
- (vi) NMFS has received such other assurances as NMFS required that the HCP will be implemented.

For each Covered Species which is not a Federal Listed Species, NMFS

finds that the HCP has satisfied the permit issuance criteria under section 10(a)(2)(B) of the FESA that would otherwise apply if such Covered Species were a Federal Listed Species.

2.2.2 NMFS Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other applicable legal requirements, NMFS will issue to PALCO the Federal Permit under Section 10(a)(1)(B) of the FESA, authorizing the Incidental Take by PALCO of each Covered Species within the jurisdiction of NMFS resulting from Covered Activities on the Covered Lands. The Federal Permit will be conditioned on compliance with the terms and conditions of the Federal Permit, the HCP, and this Agreement.

NMFS shall monitor PALCO's implementation of the HCP and compliance with the Federal Permit, and shall provide technical assistance to PALCO regarding implementation of the HCP throughout the duration of the Federal Permit.

2.3. CDFG

2.3.1. CDFG Findings

For each Covered Species within the jurisdiction of the CDFG, CDFG finds, pursuant to the specific findings set forth below that, based on the best available scientific information and other information that is reasonably available, as of the Effective Date the HCP has satisfied the permit issuance criteria under section 2081(b) of the California Fish and Game Code. CDFG also finds (a) based on the best available scientific and other information and following consultation with CDF, pursuant to section 2090 of the California Fish and Game Code; and (b) pursuant to sections 1603, 2800 et seq., 3503.5 and 3511 of the California Fish and Game Code that:

- (i) the Taking of the Covered Species will be incidental to an otherwise lawful activity;
- (ii) the impacts of the authorized Take of the Covered Species will be minimized and fully mitigated;
- (iii) the measures set forth in the HCP to minimize and fully mitigate

the impacts of the authorized Take of the Covered Species are roughly proportional in extent to the impact of the authorized Taking of the Covered Species;

- (iv) the measures set forth in the HCP to minimize and fully mitigate the impacts of the authorized Take of the Covered Species maintain PALCO's objectives to the greatest extent possible;
- (v) all of the measures set forth in the HCP to minimize and fully mitigate the impacts of the authorized Take of the Covered Species are capable of successful implementation;
- (vi) PALCO has ensured adequate funding to minimize and fully mitigate the impacts of the authorized Take of the Covered Species and for monitoring compliance with, and effectiveness of, such measures;
- (vii) the Covered Activities under the State Permit and the SYP will not jeopardize the continued existence of the Covered Species;
- (viii) the Covered Activities under the State Permit and the SYP will not result in the destruction or adverse modification of habitat essential to the continued existence of the Covered Species;
- (ix) the measures set forth in the HCP are intended to ensure that the Covered Activities under the State Permit will avoid the Take of any Fully Protected Species;
- (x) the measures set forth in the HCP are intended to ensure that the Covered Activities under the State Permit will avoid the Take of Birds of Prey, and destruction of their eggs and nests, the Take or destruction of which is not otherwise authorized pursuant to California Fish and Game Code sections 2081 or 2835;
- (xi) the conservation and management of the Habitat Coverage Species is adequately provided for in the HCP;

- (xii) the HCP identifies and provides for the regional and/or area-wide protection and perpetuation of natural wildlife diversity while allowing the Covered Activities;
- (xiii) the measures set forth in the HCP and the Streambed Alteration Agreement incorporated therein are intended to ensure that the effects of the specific Covered Activities on Covered Species, as identified in Exhibit C of the Streambed Alteration Agreement (attached as Exhibit “F”) which may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake on Covered Lands will be minimized and fully mitigated consistent with CESA and the State Permit, pursuant California to Fish and Game Code section 1603; and
- (xiv) The Covered Activities may result in the Take of species listed as threatened or endangered, or a candidate for such status, under CESA. In order to obtain a permit under Section 2081 (b) of the California Fish and Game Code and authorization under Section 2090 of the California Fish and Game Code for Incidental Take of these species under CESA, PALCO has developed and set forth in the HCP a series of measures to minimize and fully mitigate the effects of Take incidental to PALCO’s Covered Activities.

2.3.2. CDFG Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other applicable legal requirements, CDFG will issue to PALCO the State Permit under Section 2081(b) of the CESA, authorizing the Incidental Take by PALCO of each Covered Species within the jurisdiction of CDFG resulting from Covered Activities on the Covered Lands. The State Permit will be conditioned on compliance with the terms and conditions of the State Permit, the HCP, and this Agreement.

CDFG shall monitor PALCO's implementation of the HCP and compliance with the State Permit, and shall provide technical assistance to PALCO regarding implementation of the HCP throughout the duration of the State Permit.

2.4 CDF Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all legal requirements, CDF will approve the SYP. CDF shall monitor PALCO's implementation of the SYP and shall cooperate with PALCO to implement this Agreement.

3. PALCO RIGHTS AND OBLIGATIONS

3.1. Obligations of PALCO

PALCO will fully and faithfully perform all obligations assigned to it under this Agreement, the Federal Permit, the State Permit and the HCP including, but not limited to the following:

3.1.1 Marbled Murrelet Conservation Areas (MMCAs)

The MMCAs are depicted on Volume V, Maps 25 and 26, and described in detail at Volume IV, Part B of the HCP and encompass the following groves:

- (A) Elkhead Residual
- (B) Cooper Mill
- (C) Allen Creek
- (D) Road 3
- (E) Owl Creek or Grizzly Creek South/West/Center (see section 3.1.2.)
- (F) Shaw Gift
- (G) Right Road 9
- (H) Road 7 and 9 North
- (I) Booth's Run
- (J) Bell Lawrence
- (K) Lower North Fork Elk

For the term of the Federal Permit and State Permit or, if the Federal or State Permit is relinquished or revoked prior to expiration of its 50 year term, until the impacts of Take that occurred under the relinquished or revoked permit are fully mitigated in accordance with section 8.5 of this Agreement, PALCO will engage only in MMCA Conservation Activities within any area designated in the HCP as a marbled murrelet conservation area (MMCA). The Grizzly Creek MMCA shall be deemed not to be a MMCA until and unless the Grizzly Creek MMCA is substituted for the Owl Creek MMCA pursuant to section 3.1.2. of this Agreement.

(a) The following MMCA Conservation Activities have been determined by the Wildlife Agencies to be compatible with protection of, or beneficial to, the marbled murrelet and its habitat within the MMCAs, and the other Covered Species and their habitats within the MMCAs and shall be allowed within the MMCAs in accordance with the restrictions and conditions identified in section Volume I, Part A and Volume IV, Part B of the HCP:

- (1) Use, maintenance and storm proofing of existing, active roads depicted on Volume V, Map 8 (removal of trees as reasonably necessary to accomplish road use, maintenance and storm proofing is allowed);
- (2) Rock and gravel mining at existing quarry in Allen Creek MMCA as more particularly described at Volume I, Part A of the HCP;
- (3) Establishment of two designated borrow pits within each MMCA. A maximum of four acres may be cleared in connection with existing or new borrow pits within each MMCA over the life of the Permits (removal of trees not to exceed 12 inches dbh per tree is allowed where reasonably necessary to excavate the borrow pits);
- (4) Scientific surveys conducted as part of the MMCA's monitoring program as more particularly described at

Volume I, Part A of the HCP;

- (5) Removal of trees blocking roads identified in paragraph (1) in conformance with the Aquatics Conservation Plan;
- (6) Fuel removal limited to within old growth residuals stands and second-growth stands with the prior written concurrence of USFWS and CDFG;
- (7) Fire suppression in accordance with a fire management plan for the MMCAs approved by the Wildlife Agencies within one year of the Effective Date;
- (8) Stream enhancement projects with prior written concurrence of the Wildlife Agencies;
- (9) Fish releases authorized by NMFS as more particularly described in Volume I, Part A of the HCP; and
- (10) Hunting allowed during September 16 - March 23 as otherwise authorized by regulation (outside of marbled murrelet nesting season).

Except as provided in subsection (b) of this section 3.1.1, no activities other than the MMCA Conservation Activities listed in this section, as conditioned and restricted in Volume I, Part A and Volume IV, Part B of the HCP, shall be allowed within any MMCA unless the Wildlife Agencies determine, following compliance with all applicable laws and regulations including NEPA and CEQA, that such activities are compatible with protection of, or are beneficial to, the marbled murrelet and its habitat and the other Covered Species and their Habitats consistent with the HCP.

(b) With the exception of those activities identified in subsection (a) of this section 3.1.1, any activity involving the removal of timber from an MMCA, including pre-commercial and commercial thinning, shall be allowed only on a case by case basis and only if the Wildlife Agencies determine that the specific activity will be beneficial to the marbled mm-relet and its habitat, and is in conformance with the Aquatics Conservation Plan. Such

timber removal activities will be allowed only at the specific written request and/or written approval of the Wildlife Agencies in advance of such activity, following compliance with all applicable laws and regulations, including NEPA and CEQA. Such compliance shall include determining whether the environmental documentation in existence at that time adequately discloses the impacts of the proposed activity to ensure compliance with NEPA and CEQA. The Wildlife Agencies recognize, however, that the MMCA Conservation Activities identified in subsection (a) are allowed pursuant to this Agreement and the HCP, and therefore will not require any further compliance under NEPA or CEQA on the part of the Wildlife Agencies.

(c) In each Annual Report, PALCO shall to the extent known identify the proposed MMCA Conservation activities for each of the above-listed MMCAs that PALCO anticipates conducting in such MMCA over the next calendar year. The absence of the description of an MMCA Conservation Activity in an Annual Report shall not preclude PALCO from undertaking such Conservation Activities.

3.1.2 Substitution of Grizzly Creek for Owl Creek

If, prior to undertaking any timber harvesting (including salvage logging) or any other Covered Activity which is not a MMCA Conservation Activity within the Grizzly Creek MMCA, PALCO makes a legally binding commitment through amendment of this Agreement that the Grizzly Creek MMCA will be managed for the benefit of the Covered Species during the term of the HCP, through sale of Grizzly Creek pursuant to Section 5.5 of this Agreement, or by PALCO's management thereof in accordance with the terms of the HCP and this Agreement applicable to the MMCAs, then PALCO may substitute the Grizzly Creek MMCA for the Owl Creek MMCA.

Upon the amendment of this Agreement, PALCO shall restrict its Covered Activities in the Grizzly Creek MMCA to those Covered Activities permitted pursuant to section 3.1.1. of this Agreement, and PALCO may engage in any Covered Activities on the Owl Creek MMCA pursuant to the terms of this Agreement and the HCP applicable to Covered Lands which are not MMCAs.

(PALCO may elect to substitute Grizzly Creek MMCA for Owl Creek

MMCA as a matter of right and without amending this Agreement if the substitution is made prior to the Effective Date.)

3.1.3 Implementation of Operating Conservation Program

PALCO will implement all of the conservation, mitigation and management measures included in the HCP's Operating Conservation Program, including the measures provided for under the Adaptive Management and Changed Circumstances sections of the program.

3.1.3.1 Watershed Analysis

PALCO will work collaboratively with the Wildlife Agencies and other federal and state regulatory agencies to develop specific conservation and mitigation prescriptions for aquatic Covered Species necessary to achieve properly functioning riparian habitat conditions through the watershed analysis process incorporated into the HCP's Operating Conservation Program and described at Volume I, Part A and Volume IV, Part D of the HCP.

(a) At least one representative from PALCO and each of the Wildlife Agencies will serve on watershed analysis teams to develop specific prescriptions for each watershed within the Plan Area containing Covered Land for which PALCO elects to use the watershed analysis process. If available, a representative from the U.S. Environmental Protection Agency will also serve on the watershed analysis team.

(b) PALCO shall implement the specific conservation and mitigation prescriptions developed with the Wildlife Agencies through the watershed analysis process. In the event of a disagreement or lack of agreement between PALCO and one or more of the Wildlife Agency team members regarding a specific prescription, either PALCO or one or more of the Wildlife Agencies shall notify the Regional Administrator, NMFS, the Regional Director, USFWS and the Director, CDFG, that PALCO proposes to implement a prescription not agreed upon by all team members. Upon the receipt of such notice, the Regional Administrator, Regional Director and Director shall have 45 days to reject in writing the proposed prescription, during which time the prescription shall not be implemented. The Wildlife Agencies will use their reasonable efforts to confer promptly and to arrive at a

consistent position regarding the proposed prescription. If the Regional Administrator, Regional Director and Director all fail to reject the proposed prescription in the 45-day period, the prescription is deemed approved. If either the Regional Administrator, Regional Director or Director rejects the prescription, PALCO shall implement the applicable prescription specified at Volume IV, Part D, Section 3 of the HCP.

(c) Until the expiration of the initial three year period following issuance of the Federal and State Permits, or until specific prescriptions for a particular watershed containing Covered Lands have been developed by the watershed analysis team and agreed to by the Wildlife Agencies, whichever event occurs first, PALCO shall implement the aquatic conservation and mitigation measures described at Volume IV, Part D, Sections 1 and 4 of the HCP in all watersheds included in the Plan Area.

(d) Upon expiration of the initial three year period following issuance of the Federal and State Permits, PALCO shall implement the aquatic conservation and mitigation measures described at Volume IV, Part D, Section 3 of the HCP in each watershed within the Covered Lands where the watershed analysis process has not been completed until specific conservation and mitigation prescriptions for a particular watershed are developed in accordance with this Section of this Agreement.

(e) Various provisions of the watershed analysis process referred to in this section rely on the State of Washington Department of Natural Resources process. If a watershed analysis process for the relevant evolutionarily significant unit (“ESU”) of the Covered Species of salmonids is developed by the State of California and approved by NMFS and USFWS, PALCO may submit an application to amend the Federal and/or State Permits, as provided in Section 7.2 of this Agreement and applicable regulations. NMFS will continue to apply the best available scientific information and principles to watershed analysis and will use its best efforts to carefully consider in good faith whether a State of California process described in PALCO’s proposed amendment contains more current scientific understanding of watershed analysis affecting the ESUs.

3.1.4 No Increase in Take

This Section 3.1 does not authorize any modification that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto (including any environmental document evaluating the HCP or amendments thereto). Any modification that would result in such an increase in Take beyond that analyzed in the HCP must be approved as a permit amendment under Section 7.2 of this Agreement.

3.2. Covered Activities

As of the Effective Date, PALCO may Take the Covered Species incidental to the Covered Activities on the Covered Lands, as authorized by and subject to the conditions of the Federal Permit, the State Permit, the HCP and this Agreement.

The authority issued to PALCO hereunder applies to all of PALCO's agents, subsidiaries, affiliates, affiliated entities, contractors, and subcontractors, and their officers, directors, employees and agents, so long as each such person engaging in any Covered Activity is under the direct control of PALCO. Solely for purposes of this Agreement, contractors and subcontractors shall be deemed under the direct control of PALCO. Solely for the purposes of this Agreement, PALCO shall remain legally responsible for the Covered Activities of each such person.

3.3. Funding

PALCO warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP. The funding sources that PALCO will use to fulfill its HCP obligations will include income derived from PALCO's Covered Activities on the Covered Lands, and are described at Volume I, Part A of the HCP. By February 1 of each year the Federal and/or State Permit is in effect, PALCO shall submit, concurrently with its submission of the Annual Report, an annual budget with regard to its obligations under the HCP, approved by its Board of Directors, to the Wildlife Agencies, demonstrating that sufficient funds to carry out PALCO's commitments under the HCP for that fiscal year have been authorized for expenditure. Within 30 days of permit issuance PALCO shall establish a non-wasting segregated account, as a

form of additional assurance and security, in the amount of \$1.5 million, to ensure road storm-proofing and monitoring and annually thereafter, by February 1, submit an accounting thereof. PALCO will promptly notify the Wildlife Agencies of any material change in PALCO's funding resources.

A material change in PALCO's funding resources is any change in the financial condition of PALCO which will adversely affect PALCO's ability to manage the Covered Lands in accordance with the terms of this Agreement and the HCP.

PALCO shall provide an initial budget covering the period immediately following permit issuance up to the end of the first calendar year of operation within one month of the Effective Date.

3.4. Monitoring and Reporting

3.4.1. Monitoring

PALCO shall implement the monitoring program described at Volume IV, Parts A-F of the HCP.

3.4.2. Annual Reports

As described in the HCP, PALCO will submit, by February 1 of each year, a report describing the Covered Activities undertaken and results of the Operating Conservation Program, and the proposed Operating Conservation Program activities for the next year for all Covered Lands, including the MMCAs (the "Annual Report"). As applicable, the Annual Report will contain the results of the surveying and data collection for those Covered Species which have multi-year reporting protocols.

The Agencies shall use reasonable efforts to review and provide written comments on each Annual Report within sixty (60) days of receipt thereof. If any Party requests, the Parties shall meet within such 60-day period to review the Annual Report and PALCO's planned activities for the next year.

All Annual Reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

"I certify that, to the best of my knowledge, after appropriate

inquiries by myself and/or persons under my control of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.”

3.4.2. Other Information

PALCO will use its best efforts to provide within thirty (30) days of being requested by the Wildlife Agencies, any additional information in its possession or control related to implementation of the HCP that is requested by the Services for the purpose of assessing whether the terms and conditions of the HCP, including the Operating Conservation Program, are being fully implemented.

To the extent feasible, any such further information requests shall be coordinated among the Wildlife Agencies and made in a manner to be as least intrusive as possible to PALCO operations while permitting the Wildlife Agencies to carry out their oversight responsibilities. In that regard, requests made pursuant to this section 3.4.2 shall not require PALCO to prepare any additional reports; instead, PALCO shall be required only to provide information in its possession or control. Nothing in this Agreement requires PALCO to disclose communications that are subject to the work product or attorney-client privilege, or any other privilege applicable at the time the information request is made. PALCO may designate, by notifying the Agencies in writing, any trade secrets or commercial, proprietary, or financial information (“Confidential Information”) requested by the Agencies as exempt from disclosure by the Agencies pursuant to a request made under the federal Freedom of Information Act and/or the California Public Records Act, because such trade secret and/or information so designated (1) is Confidential Information, (2) has not been disclosed to the public by PALCO, and (3) to PALCO’s knowledge is not routinely available to the public from other sources. Should “Confidential Information” be requested, the Wildlife Agencies will contact PALCO sufficiently prior to releasing any such information so as to allow PALCO a reasonable opportunity to protect the Confidential Information from release. This provision is not intended to limit the applicability of the federal Freedom of Information Act and the California Public Records Act.

3.4.3. Agency Monitoring

PALCO acknowledges the necessity for the Wildlife Agencies to monitor compliance with the HCP, and will cooperate fully in such monitoring. PALCO consents to, and will allow, entry at any reasonable hour by agents or employees of the Wildlife Agencies on the Covered Lands. With regard to CDFG employees, PALCO's consent satisfies the requirements of Fish and Game Code section 857. Agents or employees of the Wildlife Agencies may enter upon lands where Covered Activities are conducted or premises where records relating to such Covered Activities are kept. In order to monitor compliance with the HCP, the Federal Permit, FESA, and CESA, agents or employees of the Wildlife Agencies may enter upon such lands or premises (1) to inspect the Covered Lands, the Covered Species, and the Covered Activities and (2) to inspect, during normal business hours, any records or documents required to be kept under the HCP. Such inspections may include: taking photographs, measurements, and samples; interviewing employees, contractors, and agents of PALCO (PALCO shall have the right to have a representative present for any such interviews); and any other actions that the Wildlife Agencies determine to be necessary for such purposes. To the extent feasible, inspections shall be coordinated among the Wildlife Agencies and conducted in a manner to be as least intrusive as possible to PALCO operations while permitting the Wildlife Agencies to carry out their monitoring responsibilities. In that regard, the Wildlife Agencies will use best efforts to give reasonable notice to PALCO of planned interviews with PALCO employees or contractors.

This section shall not apply to or limit the authority of federal law enforcement agents or state peace officers authorized by law to enter Covered Lands to enforce compliance with the HCP, FESA, CESA, or other federal or state laws.

4. INCORPORATION OF THE HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

5. LAND TRANSACTIONS

5.1. Acquisition of Land by PALCO Generally

Nothing in this Agreement, the HCP, the Federal Permit or the State Permit limits or restricts PALCO's right to acquire new lands, or interests in such lands, within or outside the Plan Area. Unless such lands are Covered Lands and the Federal Permit and State Permit have taken effect with regard to such lands in the manner provided below, any lands, or interests in lands, as may be acquired will not be covered by the Federal Permit or State Permit except upon amendment of the Federal Permit and State Permit as provided in section 7.2 of this Agreement.

5.2. Effective Date for Covered Lands Acquired After the Effective Date of This Agreement

(a) The Federal and State Permits will identify all Covered Lands. The Federal and State Permits will take effect with regard to Covered Lands acquired after the Effective Date ("Additional Lands") upon verification by the Services that PALCO has provided evidence of legal control sufficient to implement the provisions of the HCP, the Federal Permit, the State Permit and this Agreement on such Additional Lands. Such Additional Lands shall become Covered Lands on satisfaction of the conditions provided in subsection (b), subject to the following limitations:

1. No more than 25,000 acres of Additional Lands may become Covered Lands over the term of the Permit and such Additional Lands must be situated within one mile of the PALCO Lands or within the external boundaries of the PALCO Lands and be zoned for timber production. Such lands are depicted on Volume V, Map 4.
2. No old growth habitat may be included and no additional Take of marbled mm-relets will be authorized under the State and Federal Permits within the Additional Lands.
3. Consistent with the Northern Spotted Owl Conservation Plan, no Take of northern spotted owls will be allowed on any

Additional Lands during the first five years following issuance of the Federal and State Permits. Surveys for northern spotted owls shall be conducted for 5 years following acquisition, and all northern spotted owls sites located shall be added to the baseline for northern spotted owl.

(b) Procedure to Include Additional Lands as Covered Lands. PALCO shall submit to the Wildlife Agencies a notice to include Additional Lands as Covered Lands accompanied by a map showing the location and boundaries of the Additional Lands and a complete description of (1) the type of interest acquired, (2) all relevant baseline conditions on the Additional Lands, (3) the Covered Activities that will occur on the Additional Lands, and (4) the amount and timing of Take of Covered Species expected to occur on the Additional Lands.

Such Additional Lands will be included as Covered Lands if the Wildlife Agencies conclude that extension of the HCP provisions to the Additional Lands will not result in impacts not analyzed and mitigated under the HCP and will not result in unauthorized Take under the State and Federal Permits.

(c) Notwithstanding the 50 year term of the permit, PALCO shall continue to apply the conservation and mitigation measures provided for under the HCP's Operating Conservation Program to Additional Lands, including storm proofing all roads, until the impacts of Take resulting from Covered Activities on the Additional Lands have been fully mitigated in accordance with Section 8.5 of this Agreement and, upon expiration of the permit or its early termination through revocation or relinquishment, shall provide adequate assurances to the Wildlife Agencies as specified at Section 8.5.3 of this Agreement that such Additional Lands will continue to be managed in accordance with the HCP's Operating Conservation Program until and unless full mitigation is complete. In no event shall PALCO be required to continue to manage the Additional Lands in accordance with the Operating Conservation Program of the HCP longer than a period of 50 years from the date such Additional Lands become Covered Lands in accordance with subsection (b) this section.

(d) Proof of ownership of the Additional Lands, or proof of the right to

engage in the applicable Covered Activities relevant to such parcel and to implement the terms of the HCP on such Additional Lands, with a written commitment by PALCO to carry out the terms of the HCP, this Agreement, the Federal Permit and the State Permit with regard to such Additional Lands shall constitute adequate evidence of legal control required by subsection (a) above as to have the Federal and State Permits take effect for such acquired land.

5.3. Disposition of Covered Lands Other Than in MMCAs

5.3.1 Land Sold With Restrictions

(a) PALCO's transfer of ownership or control of Covered Lands, or portions thereof, other than in the MMCAs, which transfers are addressed in Section 5.5 of this Agreement, will require prior approval by the Wildlife Agencies and an amendment of the Federal and State Permits in accordance with section 7.2 of this Agreement, except that transfers of such Covered Lands may be processed as minor modifications in accordance with section 7.1 of this Agreement if:

(1) The Covered Lands or relevant interests in Covered Lands will be transferred to an agency of the Federal government and, prior to transfer, the Wildlife Agencies have determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land; or

(2) The Covered Lands or relevant interests in the Covered Lands will be transferred to a non-federal entity that has entered into an agreement acceptable to the Wildlife Agencies (e.g., an easement held by CDFG with the Services as third-party beneficiaries, accompanied by the creation of an adequate endowment for the management in perpetuity, or other security acceptable to the Wildlife Agencies, of such transferred Covered Lands) to reasonably ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP; or

(3) The Covered Lands or relevant interests in the Covered Lands will be transferred to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the HCP as it applies to the transferred Covered Lands and has obtained Federal and State incidental take permits following normal permit procedures covering

all Covered Species then identified in PALCO's Federal and State Permits which may be Incidentally Taken as a result of activities on the transferred lands covered under the acquiring entity's Incidental Take permits.

(b) The Wildlife Agencies shall use their best efforts to make any required determinations under subsections (a)(1), (a)(2), and (a)(3) within 60 days of receipt of written documentation from PALCO that the conditions contained in subsections (a), (b), and (c) have been satisfied.

(c) Upon a transfer of Covered Lands carried out in accordance with this section and section 7.1, the transferred lands shall no longer be deemed to be Covered Lands, and PALCO shall not bear any responsibility for any management activities, nor be liable for any Take of any Species by any other persons, on such transferred lands. In addition, PALCO will not be required to provide any new, additional or different conservation or mitigation on the remaining Covered Lands beyond that provided in the HCP to account for such sale, exchange or transfer.

5.3.2 Land Sold Without Restriction

PALCO may dispose of Covered Lands without restriction under the following circumstances:

(a) Where PALCO includes as Covered Lands Additional Lands, and each of the following requirements have been met: (1) concurrent with the disposal of a tract of Covered Lands, PALCO acquires another tract of land; (2) neither the tract to be disposed of nor the tract to be acquired are greater than 2000 acres; (3) the tract PALCO acquires is either larger or no smaller than 95% of the size of the tract disposed of; (4) the tract to be disposed of and the tract to be acquired contain approximately equivalent habitat value; and (5) the addition of the acquired tract as Covered Lands will not result in impacts not analyzed and mitigated under the HCP, or any amendments thereto, and will not result in unauthorized Take under the Federal and State Permits. PALCO shall submit to the Wildlife Agencies a notice indicating its intent to include Additional Lands as Covered Lands as a result of a land swap accompanied by a map showing the location and boundaries of the tract to be disposed of and the tract to be acquired

and a complete description of (A) the type of interest acquired, (B) all relevant baseline conditions on the tract to be acquired, (C) the Covered Activities that will occur on the Additional Lands, and (D) the amount and timing of Take of Covered Species expected to occur on the Additional Lands.

Such Additional Lands will be included as Covered Lands if the Wildlife Agencies conclude, after any required environmental analysis, that extension of the HCP provisions to the Additional Lands and the proposed disposal of the tract to be swapped, will not result in impacts additional to or different from those analyzed and mitigated under the HCP and will not result in unauthorized Take under the State and Federal Permits.

- (i) The Federal Permit and State Permit will take effect with regard to the acquired tract upon verification by the Wildlife Agencies that PALCO has provided evidence of legal control sufficient to implement the provisions of the HCP, the Federal Permit, the State Permit, and this Agreement on the acquired tract.
- (ii) Proof of ownership of the acquired tract or proof of the right to engage in the applicable Covered Activities relevant to such tract and to implement the terms of the HCP on such acquired tract to the reasonable satisfaction of the Wildlife Agencies shall constitute adequate evidence of legal control required by subsection (a)(i), above, so as to have the Federal Permit and State Permit take effect for such acquired tract.

(b) The transfer is the result of a minor boundary line adjustment between PALCO and an adjacent landowner. The aggregate net acreage of Covered Lands that may be transferred out of PALCO ownership pursuant to minor boundary adjustments under this subsection shall not exceed 500 acres over the 50 year term of the permit.

Upon a transfer of Covered Lands to another landowner carried out in

accordance with this section 5.3 and section 7.1, the transferred lands shall no longer be deemed to be Covered Lands, and PALCO shall not bear any responsibility for any management activities, nor be liable for any Take of any Species by any other persons, on such transferred lands. In addition, PALCO will not be required to provide any new, additional or different conservation or mitigation on the remaining Covered Lands beyond that provided in the HCP to account for such sale, exchange or transfer.

5.4. Disposition of Covered Land Through Permit Amendment

All dispositions of Covered Lands or interests in Covered Lands outside of MMCAs other than those carried out in accordance with sections 5.3 and 7.1 shall be processed as an amendment of the Federal Permit and State Permit in accordance with section 7.2 of this Agreement.

5.5. Disposition of Land in MMCAs

PALCO may sell, exchange or otherwise transfer to a third person one or more of the MMCAs, or a portion thereof, so long as PALCO demonstrates to the reasonable satisfaction of the Wildlife Agencies that the protection to be afforded by such third party (and its successors) to the marbled murrelet and the habitat of the marbled mm-relet in such MMCA(s) and to the other Covered Species is equal to or greater than that afforded under the HCP. In such event, PALCO will not be required to provide any new, additional or different conservation or mitigation on the remaining Covered Lands beyond that provided for in the HCP to account for such sale, exchange or transfer. Without limiting the generality of the foregoing, for the purposes of this Agreement, the sale, exchange or transfer to a third party of an MMCA with legally binding restrictions, substantially in the form attached as Exhibit "D", running with the land and reasonably acceptable to the Wildlife Agencies, or other protection reasonably acceptable to the Wildlife Agencies, which limit the uses of the MMCA proposed for transfer to those uses specified at section 3.1.1 of this Agreement shall be deemed to constitute protection afforded by such third party (and its successors) that is equal to or greater than that afforded under the HCP. By way of example and not limitation, in the event that PALCO sells a MMCA to an entity, the Agencies shall not impose or require any new, additional or different terms,

conditions, conservation or mitigation measures or other restrictions on the remaining Covered Lands beyond those specified at section 3.1.1. of this Agreement and at Volume I, Part A of the HCP. PALCO's road storm proofing obligations required under the HCP shall survive notwithstanding any sale, exchange or transfer under this section 5.5.

6. ASSURANCES

6.1. Federal Assurances

6.1.1. Covered Species Listed After the Effective Date

Subject to compliance with all other terms of this Agreement and the HCP, the Federal Permit shall become effective as to each Covered Species which is not a Federal Listed Species concurrent with the listing of such species under FESA.

6.1.2. Migratory Bird Treaty Act, Bald and Gold Eagle Protection Act

(a) The Federal Permit shall constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for the take of all Covered Species identified at 50 C.F.R. 10.13, excluding bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*), which are listed under the FESA as of the Effective Date (and as to unlisted Covered Species identified at 50 C.F.R. 10.13, when the Federal Permit becomes effective as to such species as provided in section 6.1.1) in the amount and/or number and subject to the terms and conditions specified in the Federal Permit. The Special Purpose Permit shall be valid for a period of three years from its effective date, provided the Federal Permit remains in effect for such period. The Special Purpose Permit under 50 C.F.R. § 21.27 as described in this section shall be renewed provided that PALCO remains in compliance with the terms of the Federal Permit and this Agreement. Each such renewal shall be valid for the maximum period allowable under the applicable regulations at the time of the renewal (which, as of the Effective Date, is three years), provided that the Federal Permit remains in effect for such period.

(b) USFWS shall not refer the incidental take of any bald eagle or golden eagle for prosecution under BGEPA if such take is in compliance with the terms and conditions (including amount and/or number) specified in the Federal Permit.

6.1.3. Further Permits

Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation with USFWS and/or NMFS required under Section 7 of the FESA. However, in any consultation with regard to the Covered Species that may be required or processed pursuant to Section 7 of FESA (16 U.S.C. § 1536(a)) subsequent to the Effective Date in connection with the Covered Activities, USFWS and NMFS shall, to the maximum extent permitted by law, rely upon, and utilize their respective Section 7 biological opinions issued with regard to the approval of the HCP, and, to the maximum extent permitted by law and regulation, ensure that any conservation and mitigation for Incidental Take of Covered Species identified in such Section 7 biological opinion conforms to the conservation and mitigation provided under the HCP and does not impose any new, additional or different conservation or mitigation measures on PALCO beyond the requirements provided for under the HCP and this Agreement.

6.1.4. Critical Habitat

The USFWS and NMFS acknowledge that pursuant to the final critical habitat rule promulgated for the marbled murrelet and codified at 50 C.F.R. 17.95(b), the critical habitat designation for the marbled murrelet will not apply to any Covered Lands for so long as the Federal Permit remains in effect. The USFWS and NMFS further agree that they will consider the HCP in their preparation of any proposed determination of critical habitat for any other Covered Species under their respective jurisdictions or revision of critical habitat for the marbled murrelet. USFWS and NMFS agree that if critical habitat is designated for any Covered Species and PALCO is properly implementing the terms of the HCP, the USFWS and NMFS will not require PALCO to commit new, additional or different conservation or mitigation beyond that provided for under the HCP and this Agreement.

6.1.5. Future Listing of Species Other Than Covered Species

(a) As to each Species that is not a Covered Species that may be affected by the Covered Activities and that is or becomes listed under FESA, USFWS and NMFS, as appropriate, shall, upon proper application by PALCO under Section 1 O(a) of the FESA and following public review and upon a determination that the application satisfies all

applicable statutory and regulatory requirements, issue an incidental take permit to PALCO authorizing the take of such species incidental to the Covered Activities.

(b) In determining whether any further conservation or mitigation measures are required, beyond those provided pursuant to the HCP, in order to issue such permits or other Take authorizations with respect to such species not identified as Covered Species, USFWS and NMFS shall (1) take into consideration the conservation and mitigation measures provided in the HCP and hereunder and (2) cooperate with PALCO to minimize adverse impacts of the listing of such species on the Covered Activities consistent with Section 10 of FESA.

6.1.6. Determination of Changed Circumstances and Unforeseen Circumstances

6.1.6.1. Purpose

The purpose of this section 6.1.6 is to apply the USFWS/NMFS Habitat Conservation Plan Assurances (“No Surprises”) Rule (the “Assurances Rule”), published in the Federal Register on February 23, 1998 (63 Fed. Reg. 8,859) to this Agreement and the HCP.

6.1.6.2. Availability

The assurances made by USFWS and NMFS in this Section 6.1.6 shall apply so long as the commitments and provisions of the HCP, this Agreement and the Federal Permit applicable to PALCO have been and are being fully implemented by PALCO.

6.1.6.3. No Additional Land, Water or Financial Compensation

For so long as the HCP is in effect, USFWS and NMFS will not require from PALCO the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water or other natural resources with regard to the Covered Species beyond the level and/or amounts allowed for under the HCP’s Operating Conservation Program and this Agreement without the consent of PALCO. By way of example and not limitation, seasonal restrictions more stringent than those provided for in the HCP would be considered to be an additional restriction on the use of land. Any additional conservation or mitigation measures required of PALCO by USFWS and/or NMFS in response to an Unforeseen

Circumstance shall comply with all applicable regulations in effect as of the Effective Date, or at PALCO's election in effect as of the date of the related Unforeseen Circumstance. (As of the Effective Date, the applicable regulations are published at 50 C.F.R. section 17.3, 50 C.F.R. section 17.22(b)(5)(iii)(B), 50 C.F.R. section 17.32(b)(5)(iii)(B), and 50 C.F.R. section 222(g)(3), and are attached as Exhibit "T".)

6.1.6.4. Changed Circumstances

6.1.6.4.1. HCP Changed Circumstances

USFWS and NMFS agree that Volume IV, Part H of the HCP contains the complete and exclusive list of all Changed Circumstances.

USFWS and NMFS further agree that unless PALCO otherwise consents, Volume IV, Part H of the HCP contains the complete and exclusive list of conservation and mitigation measures and/or planned responses that may be required of PALCO to respond to each Changed Circumstance.

6.1.6.4.2. Effect of Occurrence of a Changed Circumstance

Any party to this Agreement shall immediately notify each of the other parties of the existence of a Changed Circumstance. Thereafter, through a Changed Circumstance Notice, USFWS, and/or NMFS shall identify those additional conservation and mitigation measures or the planned response provided in Volume IV, Part H of the HCP responsive to the particular Changed Circumstance that USFWS and/or NMFS deem necessary to respond to that Changed Circumstance. To the extent consistent with the conservation needs of the Covered Species and their habitats, USFWS and/or NMFS shall select those conservation and mitigation measures from the list of available responses to such Changed Circumstances set forth in the HCP that are least burdensome on PALCO.

PALCO shall implement the additional conservation and mitigation measures set forth in Notice. If PALCO does not concur with the Changed Circumstances Notice, then PALCO and USFWS and/or NMFS, as applicable, shall utilize the dispute resolution process set forth in section 9.2 of this Agreement to attempt to resolve the dispute. Until such time as the dispute resolution process is concluded, PALCO shall

implement the additional conservation and mitigation measures set forth in the Notice. Following the conclusion of the dispute resolution process, PALCO shall implement the conservation and mitigation measures agreed to by the Wildlife Agencies and PALCO in the dispute resolution process. To the extent agreement is not achieved among the Parties through dispute resolution process, without waiving its rights to seek judicial review of the Wildlife Agencies' decision, PALCO shall continue to implement the measures set forth in the Notice.

6.1.6.4.3. Measures Limited to Those Provided Pursuant to the HCP

If additional conservation and mitigation measures are deemed necessary by USFWS or NMFS to respond to a Changed Circumstance and such measures were not provided pursuant to the HCP, USFWS and/or NMFS will not require any new, additional or different conservation and/or mitigation measures from PALCO in addition to those provided for pursuant to the HCP without the consent of PALCO.

6.1.6.5. Unforeseen Circumstances

6.1.6.5.1. Finding Unforeseen Circumstances

The Regional Director of USFWS and/or the Regional Administrator of NMFS, as appropriate, have the burden of making a finding that Unforeseen Circumstances exist with regard to any Covered Species within the jurisdiction of the respective agency using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected Covered Species. USFWS and NMFS must consider, but are not limited to, the following factors in making such finding of Unforeseen Circumstances:

- The size of the current range of the affected Covered Species.
- The percentage of the range of the affected Covered Species that has been adversely affected by the activities permitted by the HCP.
- The percentage of the range of the affected Covered Species that has been conserved by the HCP.
- The ecological significance of that portion of the range of the affected

Covered Species affected by the HCP.

- The level of knowledge about the affected Covered Species and the degree of specificity of the Covered Species' conservation program under the HCP.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected Covered Species in the wild.

Upon making a finding of Unforeseen Circumstances in accordance with this paragraph, USFWS or NMFS, as applicable, shall determine whether additional conservation and mitigation measures are necessary to respond to the Unforeseen Circumstances.

6.1.6.5.2. Effect of Finding Unforeseen Circumstances

Upon a finding of Unforeseen Circumstances and a determination that additional conservation and mitigation measures are necessary to respond to such Unforeseen Circumstances, made in the manner set forth in section 6.1.6.5.1 above, USFWS and/or NMFS as appropriate shall limit such additional conservation and mitigation measures required of PALCO to modifications of activities within the Conserved Habitat Areas, and modifications to the Operating Conservation Program for the affected Covered Species. USFWS and/or NMFS as appropriate shall use best efforts to maintain the original terms of the HCP to the maximum extent possible.

Any additional conservation and/or mitigation measures specified pursuant to section 6.1.6.5 shall not require the commitment by PALCO of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources in conflict with section 6.1.6.3 without the consent of PALCO.

PALCO shall cooperate with USFWS and/or NMFS, as appropriate, in that Service's activities with regard to the conservation and/or preservation of the affected Covered Species.

6.1.6.6. Distribution of Burden After Finding of Unforeseen Circumstances

The Services recognize that they bear a primary responsibility to utilize their authorities and resources to protect Covered Species in the event of a finding of Unforeseen Circumstances with regard to a Covered Species. The Services further recognize that they have significant resources and authorities that can be utilized to provide additional protection to Covered Species, including, but not limited to, land acquisition and exchange, habitat restoration and enhancement, translocation, and other management techniques beyond the protections provided in the HCP. The Services will use their best efforts to work with other Federal, State, and local agencies, tribes, environmental groups, and private entities to ensure the continued conservation of the Covered Species in the wild in the event of a finding of Unforeseen Circumstances.

6.2. State Assurances

6.2.1. Covered Species Listed After the Effective Date

Subject to compliance with all other terms of this Agreement and the HCP, the State Permit shall become effective as to each Covered Species which is not a State Listed Species concurrent with the regulation of such species under CESA.

6.2.2. Future Regulation of Species Other Than Covered Species

(a) As to each Species that is not a Covered Species, that may be affected by the Covered Activities and that is or becomes listed or a candidate for listing under CESA, CDFG shall, upon proper application by PALCO under Section 2081(b) of the CESA and following any required public and/or environmental review and a determination that the application satisfies all applicable statutory and regulatory requirements, issue an incidental take permit to PALCO authorizing the Take of such species incidental to the Covered Activities.

(b) In determining whether further conservation or mitigation measures beyond those provided for pursuant to the HCP are required in order to issue such section 2081(b) permits, or other Take authorizations with respect to such species not identified as Covered Species, CDFG shall (1) take into consideration the conservation and mitigation

measures provided pursuant to the HCP, and (2) cooperate with PALCO to minimize to the greatest extent possible adverse impacts of the listing or candidacy for listing of such species on the Covered Activities consistent with the requirements of Section 2081(b).

6.2.3 Changed Circumstances

CDFG may require additional conservation and mitigation measures of PALCO, as enumerated in Volume IV, Part H of the HCP, in response to Changed Circumstances that affect the Covered Species under the State Permit.

6.2.3.1 HCP Changed Circumstances

CDFG agrees that Volume IV, Part H of the HCP contains the complete and exclusive list of all Changed Circumstances. CDFG further agrees that unless PALCO otherwise consents, Volume IV, Part H of the HCP contains the complete and exclusive list of conservation and mitigation measures and planned response that may be required of PALCO to respond to each Changed Circumstance.

6.2.3.2 Effect of the Occurrence of a Changed Circumstance

Any party to this Agreement shall immediately notify each of the other parties of the existence of a Changed Circumstance. Thereafter, through a Changed Circumstances Notice, CDFG shall identify those additional conservation and mitigation measures or the planned response provided pursuant to Volume IV, Part H of the HCP responsive to the particular Changed Circumstance that CDFG deems necessary to respond to that Changed Circumstance. To the extent consistent with the conservation needs of the Covered Species and their habitats, CDFG shall select those conservation and mitigation measures from the list of available responses to such Changed Circumstance set forth in the HCP that are least burdensome on PALCO.

PALCO shall implement the additional conservation and mitigation measures set forth in the Notice upon receipt of the Notice. If PALCO does not concur with the Changed Circumstance Notice, then PALCO and CDFG shall utilize the dispute resolution process set forth in section 9.2 of this Agreement to attempt to resolve the dispute. Until such time as the dispute resolution process is concluded, PALCO shall implement the

additional conservation and mitigation measures set forth in the Notice. Following conclusion of the dispute resolution process, PALCO shall implement the conservation and mitigation measures except as otherwise agreed to by the Wildlife Agencies and PALCO in the dispute resolution process. To the extent agreement is not achieved among the parties through the dispute resolution process, without waiving its right to seek judicial review of the Wildlife Agencies' decision, PALCO shall continue to implement the conservation and mitigation measures set forth in the Notice.

6.2.3.3 Measures Limited to Those Provided Pursuant to the HCP

If additional conservation and mitigation measures are deemed necessary by CDFG to respond to a Changed Circumstance and such measures were not provided for pursuant to the HCP, CDFG will not require any new, additional or different conservation and/or mitigation measures from PALCO in addition to those provided for pursuant to the HCP without the consent of PALCO.

6.2.3.4 Consultation With Services

If the Changed Circumstances affects a Covered Species under the State Permit that is also a Covered Species under the Federal Permit, the CDFG shall consult with USFWS and/or NMFS, as appropriate.

6.2.4. Unforeseen Circumstances

6.2.4.1. Finding Unforeseen Circumstances

The Director or such other person he or she specifically designates has the burden of making a finding that Unforeseen Circumstances exist with regard to any Covered Species within the jurisdiction of CDFG using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected Covered Species. CDFG must consider, but is not limited to, the following factors in making such finding of Unforeseen Circumstances:

- The size of the current range of the affected Covered Species.
- The percentage of the range of the affected Covered Species that has been

adversely affected by the activities permitted by the HCP.

- The percentage of the range of the affected Covered Species that has been conserved by the HCP.
- The ecological significance of that portion of the range of the affected Covered Species affected by the HCP.
- The level of knowledge about the affected Covered Species and the degree of specificity of the Covered Species' conservation program under the HCP.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected Covered Species in the wild.

Upon making a finding of Unforeseen Circumstances in accordance with this paragraph, CDFG shall determine whether additional conservation and mitigation measures are necessary to respond to the Unforeseen Circumstances.

6.2.4.2. Effect of Finding Unforeseen Circumstances

Upon a finding of Unforeseen Circumstances and a determination that additional conservation and mitigation measures are necessary to respond to such Unforeseen Circumstances, made in the manner set forth in section 6.2.4.1 above, CDFG shall limit such additional conservation and mitigation measures required of PALCO to modifications of activities within the Conserved Habitat Areas, and modifications to the Operating Conservation Program for the affected Covered Species. CDFG shall use best efforts to maintain the original terms of the HCP to the maximum extent possible.

Any additional conservation and mitigation measures specified pursuant to section 6.2.4 shall not require the commitment by PALCO of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources without the consent of PALCO.

PALCO shall cooperate with CDFG in its activities with regard to the conservation and/or preservation of the affected Covered Species.

6.2.5. Fully Protected Species Statutes

(a) CDFG acknowledges and agrees that if the measures set forth in the HCP are fully complied with, the Covered Activities will not likely result in Take of Fully Protected Species.

(b) Notwithstanding subsection (a), if the CDFG discovers that such measures are not adequate to prevent Take of a Fully Protected Species, CDFG shall notify PALCO in writing of such discovery and of any new, additional or different conservation and mitigation measures that are necessary to avoid Take of Fully Protected Species. CDFG shall have the burden of demonstrating that the measures in the HCP are not adequate to avoid Take. Upon receipt of such notice, PALCO shall conduct its Covered Activities in a manner that will avoid such Take. PALCO may implement such new, additional or different conservation and mitigation measures set forth in CDFG's notification or other adequate measures agreed to by the Parties to avoid such Take.

(c) If at any time there is a change of law such that CDFG may issue a State Permit allowing the Incidental Take of any Fully Protected Species, CDFG may, at its own discretion and if appropriate, amend the existing State Permit or issue a new State Permit for Fully Protected Species under the same terms and conditions as the State Permit, to authorize the Take of Fully Protected Species to the extent permitted by law.

6.2.6 Birds of Prey, Nests and Eggs

(a) CDFG acknowledges and agrees that if the protocols/measures set forth in the HCP are fully complied with, the Take of Birds of Prey, and destruction of their nests or eggs, is not likely to occur.

(b) Notwithstanding subsection (a), if CDFG discovers that such protocols/measures are not adequate to prevent Take of Birds of Prey and/or destruction of their nests or eggs, CDFG shall notify PALCO in writing of such discovery and of any new, additional, or different protocols/measures that are necessary to avoid Take of Birds of Prey and destruction of their nests and eggs. CDFG shall have the burden of demonstrating that the measures in the HCP are not adequate to avoid Take or destruction in violation of California Fish

and Game Code section 3503.5. Upon receipt of such notice, PALCO shall conduct its Covered Activities in a manner that will avoid such Take and/or destruction to the extent that such Take and/or destruction is not authorized by California Fish and Game Code section 2081 and 2835. PALCO may implement such new, additional, or different protocols/measures set forth in CDFG's notification or other adequate measures agreed to by the Parties to avoid such unauthorized Take and/or destruction.

6.2.7. Further Permits

Nothing in this Agreement will limit the right or obligation of any state agency to engage in consultation with CDFG required under section 2090 of the California Fish and Game Code. However, in any consultation with regard to the Covered Species that may be required or processed pursuant to section 2090 of the California Fish and Game Code subsequent to the Effective Date in connection with the Covered Activities, CDFG shall, to the maximum extent permitted by law, rely upon, and utilize, its section 2090 opinion issued with regard to the approval of the HCP, and, to the maximum extent permitted by law, ensure that any conservation and mitigation for Incidental Take of Covered Species identified in such section 2090 opinion conforms to the conservation and mitigation provided under the HCP and does not impose any new, additional or different conservation or mitigation measures on PALCO beyond the requirements provided for pursuant the HCP and this Agreement.

6.2.8. Habitat Coverage

Incident to developing the HCP to meet the objectives of FESA and CESA, PALCO developed a long-term comprehensive program to ensure the continued health of the biological communities on the Covered Lands as part of the HCP. Accordingly, PALCO has proposed that the HCP qualify as a NCCP Plan and that Take of Habitat Coverage Species by the Covered Activities be permitted pursuant to Fish and Game Code section 2835.

6.2.8.1 Listing Procedures for Habitat Coverage Species

Upon becoming aware that a Habitat Coverage Species not currently listed pursuant to CESA may be proposed for listing pursuant to CESA, CDFG shall

fully consult with PALCO and shall specifically consider the degree of habitat protection afforded to the particular species by the HCP.

In preparing a report evaluating a petition presented to the Fish and Game Commission to add any Habitat Coverage Species to either the list of endangered species or the list of threatened species under Fish and Game Code section 2074.6, or in making recommendations to add a species to such lists under Fish and Game Code section 2072.7, CDFG shall during its review period under section 2074.6, or prior to making its recommendation under 2072.7, consider specific information provided by PALCO describing the existing management efforts undertaken pursuant to the HCP, and whether the HCP will reasonably assure that the species proposed for listing will be adequately protected.

6.2.8.2 Habitat Coverage

CDFG finds that the HCP furthers the protection of Covered Habitat within the Plan Area and in so doing likely reduces the need for listing Habitat Coverage Species. The elements of the HCP leading to this finding include the design and the size of the MMCAs, and the proximity of Covered Habitat in the Covered Lands to Covered Habitat in federal and/or state ownership.

CDFG shall, upon a timely application from PALCO, issue an Incidental Take permit pursuant to sections 2081 and 2835 of the California Fish and Game Code to PALCO for Habitat Coverage Species for Covered Activities within the Covered Lands, concurrent with, or as soon as practicable thereafter, the listing of such species as an endangered species threatened species, or candidate for such status under CESA.

CDFG may condition the Incidental Take permit issued pursuant to this Section 6.2.8.2 to require new, additional or different conservation or mitigation beyond that provided in the HCP on the part of PALCO only if CDFG reasonably determines the existence of an Unforeseen Circumstance relating to such newly-listed species.

6.2.8.3 Limitation on Habitat Coverages Assurances

The assurances made by CDFG pursuant to Sections 6.2.8.1 and 6.2.8.2 of this Agreement shall apply for so long as the conservation and mitigation measures set

forth in the HCP are being met. Upon any amendment to the HCP which permits a significant reduction in the amount of conservation and mitigation being provided thereunder, CDFG may reconsider whether the HCP continues to qualify as a NCCP Plan.

6.3 Joint Assurances

6.3.1. Compliance With Applicable Laws

A primary purpose of this Agreement is to provide the long-term reconciliation of the Covered Activities on the PALCO Lands and Additional Lands with the conservation and protection of Covered Species. Based on and in consideration of this Agreement, CDF and the Wildlife Agencies hereby agree and assure PALCO that:

(a) CDFG shall, to the maximum extent permitted by law, not recommend or require that PALCO provide new, additional or different conservation or mitigation for Take of Covered Species by Covered Activities on the Covered Lands beyond that required pursuant to the HCP and this Agreement, with regard to CDFG's authorities under, the following statutes: CESA, CEQA, the Porter-Cologne Act, the Forest Practice Act, the Timberland Productivity Act of 1982, Fish and Game Code sections 1802, and 3511, and Fish and Game Code section 1603 for those Covered Activities subject to and carried out in accordance with the terms of the Streambed Alteration Agreement incorporated into the HCP for so long as the Streambed Alteration Agreement is in effect;

(b) CDF acknowledges and agrees that the Wildlife Agencies have primary jurisdiction and responsibility for the protection of the Covered Species, and that the HCP, as developed by the Wildlife Agencies and PALCO and in consultation with CDF, will minimize and fully mitigate the Take of Covered Species by the Covered Activities within the Plan Area in accordance with CEQA and CESA. CDF will use the HCP, the SYP, and the EIS/EIR prepared for the HCP and SYP as program level documents for tiering with later individual Timber Harvest Plans when CDF exercises its responsibilities under the Forest Practice Act and CEQA. CDF may suggest additional conservation measures for Take of Covered Species only when necessary for compliance with CEQA, the Forest Practice Act, or

any other law. Any additional conservation measures shall, to the maximum extent practicable, be consistent with the HCP and this Agreement.

(c) USFWS and NMFS shall, to the maximum extent permitted by law, not recommend or require that PALCO provide new, additional or different conservation or mitigation for Take of the Covered Species from Covered Activities on the Covered Lands beyond that required pursuant to the HCP and this Agreement, with regard to any Service's authorities under the following statutes: FESA, NEPA, Fish and Wildlife Coordination Act (16 U.S.C. section 661-661c), the Fish and Wildlife Act of 1956 (16 U.S.C. section 742a), and the Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*).

6.4. PALCO Assurances

6.4.1. Control and Ownership of Subsidiary PALCO Entities

As of the Effective Date, Scotia Pacific Holding Company and Salmon Creek Corporation are wholly-owned subsidiaries of The Pacific Lumber Company.

During the term of the Federal Permit and State Permit, Scotia Pacific Holding Company and Salmon Creek Corporation, and their successors and affiliates, each authorize the Pacific Lumber Company to administer the HCP on its behalf, including preparing and filing reports and communicating with the Wildlife Agencies to The Pacific Lumber Company.

Scotia Pacific Holding Company, Salmon Creek Corporation and The Pacific Lumber Company each acknowledge that the HCP addresses, among other things, conservation and protection of Covered Species on the Covered Lands owned by each of them, and that a failure of any of the companies to carry out any of its obligations under the HCP may affect the viability of the entire HCP and may be attributed to all of the companies. Each of the companies shall carry out its obligations under this Agreement, the HCP, the Federal Permit and the State Permit for the term of the Federal Permit and State Permit or, if either the Federal Permit or State Permit are sooner relinquished or revoked, unless and until its obligations under Section 8.5 of this Agreement to fully mitigate for the impacts of Take of Covered Species are met. Each of the companies hereby recognizes that any breach by it with regard to its obligations

under this Agreement and the HCP may result in the suspension and/or termination of the Federal Permit and State Permit.

7. HCP/PERMIT MODIFICATIONS AND AMENDMENTS

7.1. Minor Modification of HCP and/or This Agreement

7.1.1. Processing Minor Modifications

Any Party may propose minor modifications to the HCP or this Agreement by providing written notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including any effects on operations under the HCP and on Covered Species. The Parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective only upon all other Parties' written approval. If, for any reason, a receiving party objects to a proposed modification, the proposed modification must be processed as an amendment of the permit in accordance with section 7.2 of this Agreement.

The Wildlife Agencies will not propose or approve minor modifications to the HCP or this Agreement if the Wildlife Agencies determine that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional Take not analyzed in connection with the original HCP.

7.1.2. Scope of Minor Modifications

Minor modifications to the HCP and this Agreement processed pursuant to this subsection may include but are not limited to the following:

- (1) Corrections of typographical, grammatical, and similar editing errors in the HCP and this Agreement that do not change the intended meaning;
- (2) Correction of any maps or exhibits to correct errors in mapping;

- (3) Minor changes to survey, monitoring or reporting protocols;
- (4) Additions and disposals of Covered Lands in accordance with sections 5.2, 5.3, and 5.5;
- (5) The substitution of Grizzly Creek MMCA for Owl Creek MMCA, pursuant to section 3.1.2 of this Agreement; and
- (6) Correction of any maps or exhibits to reflect previously approved modifications to the HCP or amendments to the permit.

All proposed modifications, other than minor modifications, shall be processed as permit amendments pursuant to section 7.2 of this Agreement.

7.2. Permit Amendment

7.2.1. General Federal Permit Amendment Process

Upon receipt of a written request from PALCO accompanied by a full written justification and supporting information and all other information required by law, USFWS and NMFS shall use their best efforts to process the proposed amendment within one hundred and eighty (180) days of submission of the complete application for such amendment to the applicable Service, except where longer time periods are required by law. Any decision of USFWS and NMFS approving or rejecting a requested amendment will be based on relevant information including, but not limited to, the evidence and science existing at the time of the decisions and will constitute final agency action.

7.2.2. General State Permit/Streambed Alteration Agreement Amendment Process

Upon receipt of a written request from PALCO accompanied by a full written justification and supporting information and all other information required by law, CDFG shall use its best efforts to process the proposed amendment within one hundred and eighty (180) days of receipt of the request for amendment, except where longer time periods are required by law. Any decision of CDFG approving or rejecting a requested amendment will be based on

relevant information including, but not limited to, the evidence and science existing at the time of the decisions and will constitute final agency action.

CDFG and PALCO may amend the Streambed Alteration Agreement at any time by mutual consent of PALCO and CDFG.

7.2.3. Amendment of the Permit to Allow Covered Activities Within MMCAs

Concurrent with the first and second decennial reviews of the SYP, the Parties shall confer to review progress towards the achievement of the delisting criteria (excluding marine management criteria) contained in the Murrelet Recovery Plan in existence at the time of each review. If PALCO concludes that the delisting criteria (excluding marine management criteria) contained in the Murrelet Recovery Plan as it then exists have been met, PALCO may apply for an amendment to the Federal Permit and State Permit to allow harvest activities within one or more of the MMCAs. The Wildlife Agencies shall process such application in accordance with the time frames set forth in sections 7.2.1 and 7.2.2 of this Agreement, to the extent feasible, and shall approve such amendment if the Wildlife Agencies determine, after complying with the FESA, NEPA, CESA, CEQA and other applicable law, (i) that all delisting criteria have been met, independent of the conservation benefits provided by the MMCA and/or MMCAs which is the subject of the amendment applied for, and (ii) that such amendment is otherwise consistent with the terms of the HCP and this Agreement and meets all other applicable statutory and regulatory requirements.

8. ORIGINAL TERM; SUSPENSION AND/OR REVOCATION; RELINQUISHMENT; EXTENSION; FULL MITIGATION OBLIGATION

8.1. Original Term

This Agreement and the HCP will become effective on the earliest date that the Federal Permit and State Permit are issued. This Agreement, the HCP, and the Federal Permit and State Permit will remain in effect for a period of 50 years from issuance of the original Federal Permit and State Permit except as provided in this Section 8.

8.2. Federal Permit Suspension and Revocation

USFWS and NMFS may suspend and/or revoke the Federal Permit only for cause and in accordance with regulations in force at the time of such suspension or revocation. (As of the Effective Date, these regulations are codified at 50 C.F.R. §§ 13.27 through 13.29, and 222.27, and 15 C.F.R. Part 904.) [Any specific decision or order suspending the Federal Permit shall specify either a date or the fulfillment of a condition or conditions on which the suspension will terminate. In the event a suspension has not terminated within 180 days of its effective date, at PALCO's request the applicable Service shall within 60 days either terminate the suspension or commence a proceeding to revoke the permit. (NOTE: Bracketed language in this section indicates non-agreement between PALCO and the Agencies.)] Such suspension or revocation may apply to the entire Federal Permit, or may apply only to specified Covered Species, Covered Lands, or Covered Activities.

During the period of suspension, PALCO shall remain obligated to perform its obligations under the Operating Conservation Program.

NMFS shall revoke and/or suspend the Federal Permit only after an adjudicatory process conducted essentially in the manner set forth at 15 Code of Federal Regulations Part 904 effective as of the Effective Date, a copy of which is attached as Exhibit "H".

USFWS shall interpret its authority to revoke the Federal Permit on the grounds that "continuation of the permitted activity would be detrimental to the maintenance or recovery of the affected population" (currently codified at 50 C.F.R. § 13.28(a)(5), a copy of which is attached as Exhibit "G") in a manner consistent with its assurances made in section 6.1.6 of this Agreement.

Notwithstanding revocation, PALCO shall remain obligated to mitigate for the impacts of all Take that occurred under the Federal Permit prior to its revocation in accordance with section Volume I, Part A of the HCP, pursuant to section 8.5 of this Agreement. Upon completing its full mitigation obligation set forth in section 8.5 of this Agreement, PALCO shall have no further obligations under the Federal Permit.

8.3. State Permit Suspension and Revocation

CDFG may suspend or revoke the State Permit or Streambed Alteration Agreement only pursuant to the following administrative process, even in the event final regulations are promulgated. Such suspension or revocation may apply to the entire State Permit and Streambed Alteration Agreement, or may apply only to the specified Covered Species, Covered Lands, or Covered Activities. Any specific decision or order suspending the State Permit shall specify either a date or the fulfillment of a condition or conditions on which the suspension will terminate. In the event a suspension has not terminated within 180 days of its effective date, at PALCO's request CDFG shall within 60 days either terminate the suspension or commence a proceeding to revoke the permit. Suspension or revocation of the State Permit or Covered Activities subject to the Streambed Alteration Agreement may also constitute suspension or revocation of the Streambed Alteration Agreement or the Covered Activities subject to the Streambed Alteration Agreement, as applicable.

8.3.1 Suspension

CDFG may suspend the State Permit and Streambed Alteration Agreement, as applicable, for a violation of the State Permit, the HCP, the Streambed Alteration Agreement, or this Agreement after written notice to PALCO identifying the reasons for the suspension, requesting PALCO to take identified appropriate remedial actions, and giving PALCO a reasonable opportunity to respond to or object to the notice. A response to the notice shall be in writing, stating the reasons for any objection(s) and may include supporting documentation or other relevant information, or may identify the requested remedial actions PALCO has taken or will take within a specific period of time to cure and redress the violation or breach. During the period of suspension, PALCO shall remain obligated to carry out its obligations under the Operating Conservation Program.

8.3.1.1 Reinstatement of State Permit After Suspension

As soon as possible, but no later than 15 calendar days after suspension of the State Permit or Streambed Alteration Agreement, as applicable, CDFG shall confer with PALCO as to how the violation or breach giving rise to the suspension can be

remedied. At the conclusion of such conference, CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach by considering any comments or recommendations received during the conference, the requirements of CESA, the terms of the HCP, this Agreement, and, if appropriate, the NCCP Act, the Streambed Alteration Agreement, and other law. As soon as possible, but no later than 30 days after the conference, CDFG shall send PALCO written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon completion of those actions, CDFG shall immediately reinstate the State Permit. The Parties intend that in the event of any suspension of the State Permit, the Parties shall act expeditiously and cooperatively to reinstate the Permit.

8.3.2 Revocation

CDFG may revoke the State Permit or Streambed Alteration Agreement after written notice to PALCO identifying the reasons for the revocation and giving PALCO a reasonable opportunity to object to the notice, for the following: (1) a material violation of the State Permit, the HCP, the Streambed Alteration Agreement, or this Agreement; (2) failure to complete those actions identified in a suspension notice under Section 8.3.1.1 of this Agreement within 60 days or other period of time if specified in such notice, or otherwise agreed to by the Parties; (3) a conviction, or entry of a plea of guilty, or nolo contendere for violation of the Fish and Game Code or regulations promulgated thereunder or other laws for which assurances have been given under Section 6.3(a) of this Agreement, if the violation would compromise the effectiveness of the HCP; (4) failure to maintain adequate security for performance as agreed to by the Parties pursuant to Section 3.3 of this Agreement; or (5) a change occurs in the law which authorized the State Permit that prohibits the continuation of a permit issued or authorization granted by CDFG.

8.3.2.1. Reconsideration of Revocation of State Permit

Within 45 calendar days after revocation, PALCO may submit a written request for reconsideration of the revocation with the Director of CDFG, stating the reasons and/or issues upon which the request for reconsideration is based, and including any supporting information or documentation. The Director may confer with PALCO after receiving

the request for reconsideration. The Director shall notify PALCO of his or her decision within 45 calendar days of receipt of request for reconsideration, unless the Parties agree to extend the time period. Such notification shall be in writing, stating the reasons for the Director's decision. The Director's decision shall constitute final agency action.

8.3.3 Mitigation Obligations

Notwithstanding any suspension or revocation, PALCO shall remain obligated to mitigate for the impacts of all Take that occurred prior to the State Permit's suspension or revocation, pursuant to Section 8.5 of this Agreement, unless CDFG determines that PALCO has already satisfied such obligation.

8.4. Permit Relinquishment by PALCO

PALCO may relinquish the Federal Permit and/or the State Permit in accordance with the regulations of the applicable Wildlife Agency in force on the date of such relinquishment. (The regulations applicable to relinquishing the Federal Permit are codified as of the Effective Date at 50 C.F.R. §§ 13.26 and 220.31.)

Any relinquishment of the State Permit shall also constitute a termination of the Streambed Alteration Agreement.

Notwithstanding its relinquishment of either the USFWS or the NMFS Federal Permit or State Permit, PALCO shall remain obligated to fully mitigate in accordance with Section 8.5 of this Agreement for the impacts of all Take that occurred under the relinquished permit prior to its relinquishment. Upon completing its full mitigation obligation in Section 8.5 of this Agreement, PALCO shall have no further obligations under the HCP, the Federal or State Permits or this Agreement.

8.5. Full Mitigation Upon Relinquishment, Revocation or Suspension

8.5.1. Obligation

In the event of relinquishment, suspension and/or revocation of either the USFWS or the NMFS Federal Permit or the State Permit, PALCO's obligations under this Agreement and the HCP will continue until or unless the Wildlife Agencies determine, in accordance with section 8.5.2 of this Agreement, that all Take of Covered Species that occurred

under the Federal Permit and State Permit has been fully mitigated. Unlisted Covered Species will be treated as though they were listed species in determining the amount of past take and the mitigation required.

8.5.2. Determination of Full Mitigation

In determining full mitigation for the impacts of Take of the Covered Species, the applicable Wildlife Agency will compare the amount and impact of Take of the Covered Species that has occurred prior to termination with the amount and effect of mitigation that has been provided up to that time. This analysis will take into consideration, among other factors, the duration the permit has been in effect; the location, quantity and quality of habitat of Covered Species that has been modified and preserved; size and contiguity values; landscape linkages and corridors; shape values and edge effects; unique special features; and, with respect to the marbled murrelet, the extent to which habitat conditions have improved within the residual old growth stands within the MMCAs. The applicable Wildlife Agency will determine the overall improvement of the landscape (for avian and terrestrial species) and the overall improvements in each watershed (for aquatic species), including achievement of properly functioning conditions, if this has happened. Where it has not, the applicable Wildlife Agency will determine progress toward such condition in terms of improvement over the original baseline condition as determined through surveys and the watershed analysis process.

The period to complete full mitigation will not extend beyond the original term of the permit for Covered Lands included in the Permits as of the Effective Date, and with respect to Additional Lands which become Covered Lands during the permit term, the time to complete full mitigation will not extend beyond a period of 50 years from the date the Additional Lands first were included as Covered Lands.

In the event of early termination of any Permit covering aquatic species, PALCO will, in the manner set forth in Volume I, Part A and Volume IV, Part D of the HCP, complete its road storm proofing obligation, and will continue to implement the riparian harvest prescriptions set forth in the HCP unless and until the impacts of Take of the Covered Species which have occurred up to the time of termination have been fully mitigated.

PALCO will continue to implement the requirements of the Northern Spotted Owl Habitat Conservation Plan for the remaining term of the affected permits unless the applicable Wildlife Agency determines that Take of northern spotted owl has been fully mitigated. If actual northern spotted owl habitat conditions and northern spotted owl population levels at the permit termination date exceed those projected to occur at the end of the 50-year permit, then Take of northern spotted owl will be deemed fully mitigated.

In determining the extent of any mitigation which may be required of PALCO pursuant to Section 8.5.1 of this Agreement, the applicable Wildlife Agency will take into account the biological value to the Covered Species provided by the Headwaters Reserve, unless the Federal or State Permit is relinquished by PALCO, or is revoked by the applicable Wildlife Agency pursuant to Section 8.2 of this Agreement as a result of a material and uncorrected breach by PALCO of its obligations under the revoked Permit, in which event the biological value of the Headwaters Reserve will not be taken into account.

For purposes of this section, a breach shall be deemed corrected if it is capable of being corrected during the life of the Permit and (1) the breach is corrected to the reasonable satisfaction of the applicable Wildlife Agency as soon as practicable, or (2) if such breach is not capable of immediate correction, it is corrected to the reasonable satisfaction of the applicable Wildlife Agency as soon as practicable following notice and request to cure.

8.5.3. Conveyance of Interest in Land Until Full Mitigation Reached

Upon a determination pursuant to sections 8.5.1 and 8.5.2 of this Agreement that PALCO must restrict and/or carry out activities on the Covered Lands for a term of years in order to satisfy the full mitigation obligation, PALCO shall execute and record a binding covenant running with the land, in form and content acceptable to the Wildlife Agencies (which may be in the form of the covenant attached as Exhibit "E"), that shall commit PALCO, its successors and assigns, to restrict and/or carry out, as appropriate, those activities on those Covered Lands required to mitigate fully for the impacts of the Take of Covered Species that occurred under the Federal Permit and State Permit. The covenant shall specify the duration of PALCO's full mitigation obligation, if any, which in no event shall extend beyond the

termination date of the original 50-year Federal Permit and State Permit for all Covered Lands owned by PALCO as of the Effective Date, and for the Additional Lands described in Section 5.2, a period no longer than 50 years from the date the Additional Lands become Covered Lands. The covenant shall name USFWS, NMFS and CDFG as parties with a right to enforce the terms of the covenant.

8.5.4. Termination of HCP Obligations

Following Federal Permit and State Permit revocation or relinquishment, upon receipt of written concurrence from the Wildlife Agencies that it has satisfied its full mitigation, PALCO shall have no further obligations under the HCP, the Federal or State Permits or this Agreement, and the Wildlife Agencies shall within 30 days record a release of covenant in the form attached as Exhibit “J”.

8.6. Non-Substantive Breaches; Notice; Waiver

So long as PALCO cures, or commences to cure as set forth below in this section, any non-substantive breach, the Wildlife Agencies will not use the occurrence of such breach as a basis for revoking or suspending the Federal Permit and/or the State Permit, or of waiving the Assurances Rule.

Before commencing any proceeding to revoke or suspend the Federal Permit and/or the State Permit, and before asserting based on a non-substantive breach that PALCO is not “fully implementing” the terms of this Agreement and/or the HCP with regard to the Assurances Rule, the Wildlife Agencies shall provide PALCO written notice of the non-substantive breach with supporting documentation adequate to allow PALCO to determine the nature and extent of the breach. So long as PALCO cures, or commences to cure, the breach within 15 days of receipt of notice, and for those breaches which cannot be cured within such 15-day period completes curing the breach within 60 days, the Wildlife Agencies shall accept the cure and waive the breach.

By way of example and not limitation, failure to provide any report on the date such report is to be delivered to the Wildlife Agencies constitutes a non-substantive breach for the purposes of this section.

9. REMEDIES, ENFORCEMENT AND DISPUTE RESOLUTION

9.1. Remedies

Each party shall have all remedies available [at law or] in equity to enforce this Agreement, the Federal Permit, the State Permit and the HCP.

(a) No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement [or any other cause of action arising from this Agreement]. Notwithstanding the foregoing sentence:

- (1) Retention of Liability. Each Party shall retain whatever liability it would possess for its present and future acts or failure to act without existence of this Agreement.
- (2) Landowner Liability. Each Party shall retain whatever liability it possesses as an owner of interests in land.
- (3) Enforcement Authority of Federal and State Governments. Nothing contained in this Agreement is intended to limit the authority of the United States government or the State of California to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under FESA, CESA, or other applicable federal or state law.
- [(4) PALCO may seek money damages only upon a final determination by court of competent jurisdiction that equitable relief is not available. (NOTE: The Agencies do not agree to the inclusion of the language in the first bracket and this subsection (4), and the exclusion of the language in paragraph (a).)]

(b) Injunctive and Temporary Relief. The Parties acknowledge that injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

9.2. Dispute Resolution

The Parties recognize that disputes concerning implementation of this Agreement, the HCP, the Federal Permit and/or State Permit may arise from time to time. The Parties agree to work together in good faith to resolve such disputes using the dispute resolution procedures set forth in this section or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available administrative or judicial remedy without regard to the dispute resolution procedures described in this Section 9.2.

Unless the Parties agree in writing upon another dispute resolution process or unless a Party has initiated an administrative or judicial process related to the subject of the dispute, and except where other procedures are otherwise provided for by this Agreement (e.g., Section 3.3.1 relating to the watershed analysis process), the Parties shall use the following process to attempt to resolve the disputes.

9.2.1 Meet and Confer

(a) Prior to taking an action that would restrict the Covered Activities, or the scope of any Covered Activity, under the Permit(s), the Agency proposing to take the action will provide notice of the proposed action to PALCO. Unless otherwise agreed to by the Parties, at the request of PALCO, the Parties shall meet and confer with regard to the subject of the notice within 10 calendar days of such notice.

(b) PALCO may, at any time, elevate the dispute to the USFWS Regional Director, NMFS Regional Administrator, CDFG Director, or CDF Director, as applicable.

(c) The requirement that the Agencies meet and confer with PALCO prior to taking an action described in Section 9.2.1 (a) shall not apply to disputes arising from Sections 6.1.6.4.2 (Effect of Occurrence of a Changed Circumstance), 6.1.6.6 (Distribution of Burden After Finding of Unforeseen Circumstances), 6.2.3.2 (Effect of the Occurrence of a Changed Circumstance) or 6.2.4.2 (Effect of Finding Unforeseen Circumstances), or where the applicable Agency determines that the action must be taken immediately to avoid violation of

applicable law, including jeopardy to the continued existence of a Federal Listed or State Listed Species. In the case of disputes arising from such sections, the Parties shall meet and confer as soon as possible thereafter, but no later than 10 calendar days after the action by the Agency.

(d) Any Party may terminate the meet and confer process if such process has not resolved the dispute within 30 days of the meet and confer notice.

9.2.2 Non-Binding Dispute Resolution

If the meet and confer process has not resolved the outstanding dispute relating to Sections 6.1.5 (Future Listing of Species Other Than Covered Species), 6.1.6 (Determination of Changed Circumstances and Unforeseen Circumstances), 6.2.2 (Future Regulation of Species Other Than Covered Species), 6.2.3 (Changed Circumstances), 6.2.4 (Unforeseen Circumstances), 6.2.7 (Further Permits), 6.3 (Joint Assurances), 8.2 (Federal Permit Suspension and Revocation), 8.3 (State Permit Suspension and Revocation), 8.5 (Full Mitigation Upon Relinquishment, Revocation or Suspension), or 10.5(b) (Severability), PALCO may initiate a process of non-binding dispute resolution no later than five (5) calendar days after the conclusion of the meet and confer process. The dispute resolution process shall involve the mutual selection by the applicable Parties of a third person to mediate resolution of the dispute between the Parties. If the applicable Parties fail to agree upon a mediator, the applicable Parties shall each submit three (3) names of proposed mediators to a previously agreed upon objective third person whose sole function shall be to select a mediator from the names submitted. The applicable Parties shall select the objective third person within 60 days after the Effective Date. The Parties may mutually agree to change their selection of such person at any time.

Unless the Parties agree on alternative procedures, the mediator shall conduct the non-binding dispute resolution process as follows:

1. The mediator shall consider all relevant evidence or information presented by the Parties;
2. No Party shall have *ex parte* communications with the mediator;
3. Each Party shall have an opportunity to respond to evidence

- or information presented by another Party;
4. The mediator shall provide an oral or written report or recommendation to each of the applicable Agencies and PALCO.
 5. The procedure shall conclude and any report or recommendation shall be issued within 30 days of the initiation of the proceeding, unless otherwise agreed to by the applicable Parties.

10. MISCELLANEOUS

10.1. Notices

All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile (with a confirming copy to be sent by overnight mail), sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section and shall be effective at the time of receipt of personal delivery, receipt of facsimile transmission, receipt of overnight delivery, or five days after the date of mailing.

PALCO:

John A. Campbell
President and Chief Executive Officer
The Pacific Lumber Company
125 Main Street
P.O. Box 37
Scotia, CA 95565

with copies to:

Dale A. Head, Esq.
Managing Counsel - Environmental and Litigation
The Pacific Lumber Company
5847 San Felipe, Suite 2600
Houston, TX 77057

Robert D. Thornton, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karman, Suite 1800
Irvine, California 92715

Jared Carter, Esq.
Frank Shaw Bacik, Esq.
Rawles, Hinkle, Carter, et al.
169 Mason Street, Suite 300
Ukiah, CA 95482

USFWS: United States Fish and Wildlife Service
500 N.E. Multnomah, Suite 607
Portland, Oregon 97232
Attention: Regional Director

with a copy to: Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way
Sacramento, CA
Attention: Regional Solicitor

NMFS: National Marine Fisheries Service
501 W. Ocean Blvd., Suite 4200
Long Beach, CA 90802
Attention: Regional Administrator

with a copy to: NOAA, Office of the General Counsel
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
Attention: Regional Counsel

CDFG: Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

with a copy to: General Counsel
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

CDF: Director
California Department of Forestry and
Fire Protection
1416 Ninth Street
Sacramento, CA 95814

with a copy to:

Chief Counsel
California Department of Forestry and
Fire Protection
1416 Ninth Street
Sacramento, CA 95814

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. The parties agree to provide to the others, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

10.2. No Partnership

Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner, or joint venturer of any other Party.

10.3. References to Regulations

Any reference in this Agreement, the HCP, or the Federal Permit to any regulation or rule of USFWS and/or NMFS shall be deemed to be a reference to such regulation or rule in existence at the Effective Date, unless PALCO consents in writing to the application of such regulation or rule in existence at the time an action is taken, or unless reliance on such regulation is otherwise prohibited by statute or court order.

10.4. Entire Agreement

This Agreement, along with the exhibits attached hereto, the HCP, the Federal Permit and the State Permit, constitutes the entire agreement and understanding between the Parties. This Agreement supersedes any and all prior and contemporaneous agreements, representations or understandings of the Parties, if any, whether oral or written, with respect to the subject matter hereof and contains all of the covenants and agreements among the Parties with respect to said matter. Each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on

behalf of any other Party that is not embodied in this Agreement, the HCP, the Federal Permit and/or the State Permit.

10.5. Severability

(a) If any provision of this Agreement or the HCP is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provision.

(b) The State Permit, the Streambed Alteration Agreement, the Federal Permit issued by USFWS, and the Federal Permit issued by NMFS are all separately enforceable. Except as otherwise provided in this Agreement, revocation, suspension or relinquishment of any one such permit shall not automatically cause the revocation and/or suspension of the other permits, provided that any revocation, suspension or relinquishment of a Federal Permit may require a re-evaluation of the other Federal Permit to ensure that the Take authorized by the remaining Federal Permit is not likely to jeopardize the continued existence of, or result in the Take or adverse modification of the designated critical habitat of, a Covered Species listed under the ESA that was included in the revoked, suspended or relinquished Federal Permit. The suspension, revocation or relinquishment of either the NMFS or USFWS Federal Permit is identified as a Changed Circumstance at Volume IV, Part H of the HCP and PALCO shall comply with the planned response to such Changed Circumstance described at Volume IV, Part H of the HCP.

10.6. Governing Law

This Agreement shall be governed by FESA and other applicable federal laws, and the laws of the State of California.

10.7. Elected Officials Not to Benefit

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

10.8. Availability of Federal Funds

Implementation of this Agreement and the HCP and the assurances provided

therein, to the extent funds are required by such assurances, by USFWS and NMFS is subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that neither USFWS nor NMFS will be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

10.9. Availability of State Funds

Implementation of this Agreement and the HCP and the assurances provided therein, to the extent funds are required by such assurances, by CDFG is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

10.10. Relationship to FESA, CESA and Other Authorities

Nothing in this Agreement is intended to limit or diminish the legal responsibilities of USFWS and NMFS as agencies of the Federal government or CDF or CDFG as agencies of the State of California. In that regard, nothing in this Agreement is intended to limit the authority of USFWS and NMFS to fulfill their responsibilities under FESA or CDFG under CESA, including but not limited to seeking penalties against PALCO.

10.11. Benefit of Agreement; No Third-Party Beneficiaries

This Agreement is solely for the benefit of the State of California, by and through CDF and CDFG, the people of the United States of America by and through USFWS and NMFS, and PALCO. Without limiting the applicability of rights granted to the public pursuant to FESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal or other injuries or damages pursuant to the

provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed under existing law.

10.12. Counterparts

This Agreement may be executed by the Parties in several counterparts, each of which shall be deemed to be an original copy.

10.13. Further Actions and Cooperation

From time to time hereafter, the Parties shall execute such instruments and other documents and take such other actions, upon the request of the other, as may be reasonably necessary to carry out the intent of this Agreement. The Wildlife Agencies and CDF agree to reasonably cooperate with PALCO in the implementation of this Agreement. Such cooperation by the Wildlife Agencies and CDF shall include acknowledging, to the extent applicable, that this Agreement remains in full force and effect.

10.14. Technical Assistance by USFWS

The Parties anticipate that over the life of the Federal Permit new data and scientific studies or research will provide valuable information relevant to the biology and conservation status of the marbled murrelet. Should PALCO seek the assistance of independent scientific experts on marbled murrelet biology to evaluate the status of the marbled murrelet, at the request of PALCO, USFWS will provide appropriate technical assistance, within its available resources, to the experts and, in administering the Federal Permit, will consider the views of the experts carefully and in good faith.

10.15. Amendment of the Agreement

This Agreement is not subject to amendment except in a writing signed by all the Parties.

10.16. Applicable Laws

Notwithstanding any other provisions in this Agreement, except as provided in Section 10.3, all activities undertaken pursuant to this Agreement, the HCP, or the Federal or State Permits must be in compliance with all applicable federal and state laws and regulations,

including CESA (including Section 2081) and FESA (including the provisions of Section 7 and Section 10.)

10.17. Successors and Assigns; Permit Assignment

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the Federal Permit shall be governed by the Services' regulations. (Under the regulations in force on the Effective Date of this Agreement, a permit issued under section 10(a) of FESA may not be assigned or otherwise transferred.) The State Permit shall not be assigned or transferred without the written consent of CDFG, until such time as final regulations regarding the assignment and transfer of State of California Incidental Take permits become effective. Once such final regulations become effective, such regulations shall govern the transfer and/or assignment of the State Permit.

10.18 Due Authorization

Each Party represents and warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the Effective Date.

Dated: _____

THE PACIFIC LUMBER COMPANY

By: _____

John A. Campbell
President and Chief Executive Officer

Dated: _____

SCOTIA PACIFIC HOLDING COMPANY

By: _____

John A. Campbell
President and Chief Executive Officer

Dated: _____

SALMON CREEK CORPORATION

By: _____

John A. Campbell
President and Chief Executive Officer

Dated: _____

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

Michael J. Spear
Manager, California/Nevada Operations Office

Dated: _____

Approved as to form:
OFFICE OF THE REGIONAL SOLICITOR
U.S. Department of the Interior

By: _____
David Nawi
Regional Solicitor

Dated: _____

NATIONAL MARINE FISHERIES SERVICE

By: _____
William T. Hogarth, Ph.D.
Regional Administrator

Dated: _____

Approved as to form:
OFFICE OF GENERAL COUNSEL
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

By: _____
Monica P. Medina
General Counsel

Dated: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____
Jacqueline E. Schafer
Director

Dated: _____

Approved as to form:
GENERAL COUNSEL
California Department of Fish and Game

By: _____
Linus S. Masouredis
General Counsel

Dated: _____

CALIFORNIA DEPARTMENT OF FORESTRY
AND FIRE PROTECTION

By: _____
Richard Wilson
Director

Dated: _____

Approved as to form:
GENERAL COUNSEL
California Department of Forestry and Fire Protection

By: _____
Norman E. Hill
Chief Counsel